

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MICHAEL JOSEPH SIMS,)	4:07CV3088
)	
Petitioner,)	
vs.)	MEMORANDUM
)	AND ORDER
ROBERT HOUSTON,)	
)	
Respondent.)	

In response to the court's previous memorandum and order, the parties have both submitted briefs on the statute of limitations issue. They agree that the 1-year limitations period has not run because Petitioner filed a motion for postconviction relief in state court on October 13, 2000, which tolled the statute until December 22, 2006, when the Nebraska Supreme Court affirmed the denial of Petitioner's motion. I therefore find that summary dismissal is not required, and that the Respondent must answer or otherwise respond to the § 2254 petition.

IT IS ORDERED that:

1. On or before June 15, 2007, Respondent shall file an answer to the § 2254 petition on the merits of the claims and any affirmative defenses, in the manner contemplated by Rule 5 of the Rules Governing Section 2254 proceedings in the United States District Courts, or Respondent may, in his discretion, limit his response to affirmative defense(s) by filing a motion for summary judgment pursuant to Fed. R. Civ. P. 56(b);

2. Whether Respondent files an answer or a motion for summary judgment, he shall also file with the court and serve on the petitioner a document entitled Designation of Relevant State Court Records;

3. All records listed in the Designation of Relevant State Court Records shall be filed with, or delivered to, the court at the time the Designation of Relevant State Court Records is filed;

4. If Respondent elects to file a motion for summary judgment, copies of all records designated and filed in support of the motion shall also be served on Petitioner; and

5. Whether Respondent files an answer or a motion for summary judgment, Petitioner may reply within thirty (30) days thereafter.

May 15, 2007.

BY THE COURT:

s/ Richard G. Kopf
United States District Judge